

59158 U.S. 110



02/18/97

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: The Assistant Commissioner for Patents, Washington, D.C. 20231 on

JANUARY 2, 1997

Larry L. Huston

32,994

Name of Attorney

Registration No.

Signature of Attorney

#22

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
IN RE APPLICATION OF
LETHA M. HINES
ROBB E. OLSEN
SERIAL NO.: 08/383,550
FILED: FEBRUARY 3, 1995
FOR: SANITARY NAPKIN HAVING
CORE PREDISPOSED TO A
CONVEX UPWARD
CONFIGURATION
P&G CASE: 5006C

GROUP ART UNIT: 3308
EXAMINER: CHO

APPEAL BRIEF

The Assistant Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

Enclosed are triplicate copies of Appellant's Appeal Brief. The authorization to charge the fee for filing this Brief was provided with the Notice of Appeal.

1. Real Party In Interest

The real party in interest is The Procter & Gamble Company.

2. Related Appeals and Interferences

None.

3. Status of Claims

Claims 1, 4-9, 12-17, and 19 are finally rejected under 35 U.S.C. §103 and appealed.

4. Status of Amendments

Claims 1, 12, 15, 16, and 17 were amended after final. The amendments were entered.

5. Summary of the Invention

The invention is a sanitary napkin 20 (Fig. 1:20; 4:17-25). The sanitary napkin 20 (Fig. 1:20; 4:17-25) has a longitudinal centerline O-O (Fig. 2; 4:38-5:5) and a lateral centerline A-A (Fig. 2; 5:5-10) orthogonal to the longitudinal centerline O-O (Fig. 2 4:38-5:5).

The sanitary napkin 20 (Fig. 1:20; 4:17-25) comprises a liquid pervious topsheet 24 (Fig. 1:20; 4:17-25; 7:13-22), a liquid impervious backsheet 26 (Fig. 1:20; 4:17-25; 6:18-7:12), and an absorbent core 28 (Fig. 1:20; 4:17-25; 5:29-6:17) intermediate the topsheet 24 (Fig. 1:20; 4:17-25; 7:13-22) and the backsheet 26 (Fig. 1:20; 4:17-25; 6:18-7:12). The core 28 (Fig. 1:20; 4:17-25; 5:29-6:17) has two major faces, a first major face oriented towards the topsheet 24 (Fig. 1:20; 4:17-25; 7:13-22) and a second major face oriented towards the backsheet 26 (Fig. 1:20; 4:17-25; 6:18-7:12). The first major face of the absorbent core 28 (Fig. 1:20; 4:17-25; 5:29-6:17) has a discontinuous line of weakness 30, 30' (Fig. 2:T; 8:18-26; 10:30-37) therein. The line of weakness 30, 30' (Fig. 2; 8:18-26) is longitudinally concave towards the lateral centerline A-A (Fig. 2; 5:5-10; 8:32-35) and comprises discrete sites 36 (Fig. 2; 9:26-10:28). The discrete sites 36 (Fig. 2; 9:26-10:28) are bilaterally staggered (10:30-37) about the lines of weakness 30, 30' (Fig. 2; 8:18-26), wherein the sanitary napkin 20 (Fig. 1:20; 4:17-25) deforms to a convex upward configuration (Fig. 4; 8:26-31) while in use.

6. Issues

1. Are Claims 1, 4-9, 12-17, and 19 obvious under 35 U.S.C. §103 over Buell (U.S. 5,197,959) in view of Glassman (U.S. 4,758,240) and Sneller (WO 93/12747)?

7. Grouping of Claims

The claims stand or fall together.

8. Argument

As explained by Examiner Cho in the telephonic interview, Glassman (Figs. 3-4) teaches of discrete sites in a core. The discrete sites of Glassman are applied to Figs. 6, 23B-23C, and 28 of Buell in an attempt to arrive at the claimed invention.

Sneller (para. bridging pp.18-19) is relied upon for its teaching of producing controlled bunching. Sneller thereby, allegedly, provides the motivation to apply the Glassman discrete sites to the aforementioned figures in Buell.

It is undisputed that if one selects the wrong figures of Buell, the claimed invention does not result. For example, Buell Figs. 14-15 have the wrong concavity. One must know (somehow) to ignore the concave upwards teachings in Buell.

Assuming *arguendo*, there is motivation to combine these references, one must then choose the proper arrangement of discrete sites from the Glassman array to produce the claimed line of weakness. Examiner Cho twice acknowledged in the telephonic interview there are between "one and an infinite number" of lines of weakness which could be selected from the Glassman teaching.

Requiring one of ordinary skill to select from between "one and an infinite number" of lines of weakness, is a *prima facie* return to the forbidden "obvious to try" standard. One of ordinary skill selecting from one to an infinite number of possible lines of weakness would *not* consider the proper selection to produce the claimed invention to be an obvious choice.

But, the rejecting combination suffers from more serious deficiencies. Assuming one of ordinary skill:

- 1) desired Sneller's controlled bunching, and
- 2) selectively picked (and selectively ignored) the proper figures of Buell, and
- 3) properly chose between "one and an infinite number" of Glassman's discrete sites, the claimed invention still does not result.

As acknowledged by Examiner Cho, one using Glassman to arrange the discrete sites to form the lines of weakness would have lines of weakness passing *through* the discrete sites. This disposes the discrete sites *on* the line of weakness - in contrast to the claims which require the discrete sites to be *bilaterally staggered about* the line of weakness.

The distinction between placing the discrete sites *on* the line of weakness and bilaterally staggering the discrete sites *about* the line of weakness is set forth in the Specification (10:35-37). Bilaterally staggering the discrete sites provides a more gradual bending axis, improves the resiliency of the sanitary napkin, and provides a fuller target area to intercept menses.

Even if one makes the Examiner's combination, having the benefit of knowing to make the claimed combination from the three cited references, the claimed invention does not result. An invention which does not result from the prior art combination cannot be obvious thereover.

SUMMARY

There is scant, at best, motivation to combine Glassman with Buell in view of the teaching of Sneller. Once one makes this combination, he or she must select the convex upward teachings of Buell and ignore the convex downward teachings of Buell.

Then one must select from the admittedly infinite number of lines of weakness of Glassman and apply the correct arrangement to the convex upward teaching of Buell.

Even when one picks and chooses among all of these possible combinations, the claimed invention still does not result. The claimed invention is not obvious. This Board is respectfully requested to reconsider and allow Claims 1, 4-9, 12-17, and 19.

Respectfully submitted,

FOR: LETHA M. HINES
ROBB E. OLSEN

By



Larry L. Huston
Attorney for Applicants
Registration No. 32,994
(513) 634-2964

JANUARY 2, 1997
Cincinnati, Ohio
APBRIEF.DOC

5
APPENDIX

1. A sanitary napkin having a longitudinal centerline and a lateral centerline orthogonal thereto, and having longitudinal side margins and transverse ends, said sanitary napkin comprising:
a liquid pervious topsheet;
a liquid impervious backsheet; and
an absorbent core intermediate said topsheet and said backsheet, said core having two major faces, a first major face oriented toward said topsheet and a second major face oriented toward said backsheet, said first major face having a discontinuous first line of weakness therein, said line of weakness being longitudinally concave towards said lateral centerline, said line of weakness comprising discrete sites, said discrete sites being bilaterally staggered about said line of weakness wherein said sanitary napkin deforms to a convex upward configuration while in use.
4. A sanitary napkin according to Claim 1 wherein said line of weakness comprises compressed regions in said core.
5. A sanitary napkin according to Claim 1 wherein said line of weakness comprises cuts or slits in said core.
6. A sanitary napkin according to Claim 1 wherein said line of weakness joins said core and said topsheet.
7. A sanitary napkin according to Claim 6 wherein said sanitary napkin is free of adhesive joining said core and said topsheet.
8. A sanitary napkin according to Claim 1 further comprising second and third discontinuous lines of weakness in said core on the opposite sides of said longitudinal centerline and being laterally concave away from said longitudinal centerline, wherein said second and third lines of weakness comprise discrete sites.
9. A sanitary napkin according to Claim 8 further comprising V-shaped discontinuous lines of weakness comprise discrete sites radiating outwardly from said longitudinal centerline as a said transverse end of the sanitary napkin is approached.

12. A sanitary napkin according to Claim 11 further comprising flaps for attachment to an undergarment of a wearer, wherein said flaps are joined to said backsheet inboard of said longitudinal side margins of said sanitary napkin.
13. A sanitary napkin according to Claim 12 further comprising two discontinuous lines of weakness symmetrically opposite about said longitudinal centerline and oriented concave outward therefrom, said two lines of weakness having a vertex juxtaposed with said lateral centerline, wherein said two lines of weakness comprise discrete sites.
14. A sanitary napkin according to Claim 13 whereby said sanitary napkin deforms to a W-shaped cross section in response to lateral pressure from the thighs of the wearer.
15. A sanitary napkin according to Claim 14 wherein said backsheet has an inwardly oriented surface oriented towards said core, and an outwardly oriented surface opposed thereto, [and which contacts the garment of the wearer], said sanitary napkin further comprising strips of adhesive disposed on said outwardly oriented surface of said backsheet, said strips of adhesive radiating outwardly from the longitudinal centerline, towards an end of the sanitary napkin.
16. A sanitary napkin having a longitudinal centerline and a lateral centerline orthogonal thereto, and having longitudinal side margins and transverse ends, said sanitary napkin comprising:
 - a liquid pervious topsheet;
 - a liquid impervious backsheet; and
 - an absorbent core intermediate said topsheet and said backsheet, wherein said absorbent core and said topsheet are joined together at discrete sites forming a first line of weakness symmetric about said longitudinal axis and longitudinally concave towards said lateral centerline, wherein said discrete sites are bilaterally staggered about said line of weakness.

17. A sanitary napkin according to Claim 16 further comprising a second discontinuous line of weakness concave towards said first line of weakness and concave towards said lateral centerline, wherein said second line of weakness is formed by discrete sites.
19. A sanitary napkin according to Claim 18 further comprising discrete sites joining said core and said topsheet, said discrete sites being dispersed throughout a portion of said sanitary napkin without conforming to a line of weakness and having a lesser density than said discrete sites comprising said line of weakness.